

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 31, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AARON JOSEPH CUNNINGHAM,

Plaintiff,

v.

PEND OREILLE COUNTY SHERIFFS
DEPARTMENT and NEWPORT TOW
COMPANY,

Defendants.

No. 2:23-cv-00075-MKD

ORDER DENYING LEAVE TO
PROCEED *IN FORMA PAUPERIS*
AND DISMISSING ACTION

By Order filed April 26, 2023, the Court directed Plaintiff Aaron Joseph Cunningham, a *pro se* federal pretrial detainee, to show cause under 28 U.S.C. § 1915(g) why he should be allowed to proceed *in forma pauperis* in this action. ECF No. 5. The Court gave Plaintiff thirty days to comply with the Order and cautioned Plaintiff that his failure to show cause or pay the \$402.00 filing fee would be construed as his consent to the dismissal of this action without prejudice for failure to comply with the filing fee requirements of 28 U.S.C. § 1914.

ORDER DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* AND
DISMISSING ACTION - 1

1 Plaintiff is currently incarcerated at the Kittitas County Corrections Center in
2 Ellensburg, Washington. Plaintiff did not respond to the Order and has filed
3 nothing further in this action.

4 Plaintiff does not challenge the Court's conclusion that he has at least three
5 qualifying dismissals under 28 U.S.C. § 1915(g). *See* ECF No. 5 at 2-3. He has
6 failed to demonstrate that he was under imminent danger of serious physical injury
7 at the time he filed his civil rights complaint on March 17, 2023. *See Ray v. Lara*,
8 31 F.4th 692, 695 (9th Cir. 2022) ("the imminent danger exception to the PLRA
9 three-strikes provision requires a nexus between the alleged imminent danger and
10 the violations of law alleged in the complaint."). The Court finds that Plaintiff has
11 failed to overcome the preclusive effects of 28 U.S.C. § 1915(g). Although
12 granted the opportunity to do so, Plaintiff did not pay the \$402.00 filing fee to
13 commence this action.

14 Accordingly, **IT IS ORDERED:**

15 1. Plaintiff's application to proceed *in forma pauperis*, ECF No. 3, is
16 **DENIED.**

17 2. This action is **DISMISSED WITHOUT PREJUDICE** for failure to
18 comply with 28 U.S.C. § 1914(a).

19 3. The Court certifies that any appeal of this Order would not be taken in
20 good faith and would lack any arguable basis in law or fact.

1 4. The Clerk's Office is directed to enter this Order, enter judgment,
2 provide copies to Plaintiff at his last known address, and **CLOSE** the file.

3 **DATED** May 31, 2023.

4
5 s/Mary K. Dimke
6 MARY K. DIMKE
7 UNITED STATES DISTRICT JUDGE
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